



MAINE MERCHANTS ASSOCIATION, INC.

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January 7, 2010

Submitted via email: carole.a.cifrino@maine.gov

Ms. Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Department of Environmental Protection
7 State House Station, Augusta, Maine 04333

RE: Comments from Maine Merchants Association on *Implementing Product Stewardship in Maine* Report

Dear Ms. Cifrino:

I am submitting comments on behalf of the members of the Maine Merchants Association. Our association represents 430 merchant and retail members statewide. Maine's retail community employs approximately 90,000 Mainers. In regards to our comments on this Product Stewardship report, a subset of our members are community retail pharmacies and have particular interest in the pharmaceutical and medical sharp issues, but overall the association has serious concerns about the proposal including the proposal for add paint to Maine' product stewardship program.

Our overall recommendation to the Department of Environmental Protection and to the Joint Standing Committee on Environment and Natural Resources is that although product stewardship is an important issue and that the "framework" legislation was passed in 2010, the Maine Merchants Association urges policy makers to take a pause before implementing any new product stewardship programs. There are a number of other states that are adopting programs on e-waste, on paint, on a number of other products. Maine continues to be ahead of many other states in the implementation of these programs. However, it is time to let other states be the trailblazer on these programs to work through the pitfalls and establish a more uniform program that can be better used in additional states. We often hear from our national members about the "patchwork" of legislation in various states and rolling out a program on paint, pharmaceuticals and medical sharps will only acerbate that patchwork process.

In more general terms, our association is most concerned with any provision that mandates retail take-back of specific products also known as "reverse retailing". We know some of our members voluntarily agree to participate in various programs and that is fine, but we are adamantly opposed to any provision that mandates retail participation of product take-backs.

In the 85 page report, we did not see many instances of mandatory retailer participation. However, we did note on page 11 and page 18 regarding unused pharmaceuticals and regarding medical sharps

included the recommendation to “Require pharmacies and health care settings that distribute or provide patients with prescription drugs, including samples, to post and provide program information and pre-paid mailers.” There may be other examples within the report but we are opposed to mandatory retailer participation provisions.

Retailers and merchants sell the products that their customers want and demand. Although the general public may view hardware stores, for example, as all alike and perhaps interchangeable, the reality is that each retailer is unique and their internal and external processes vary as do the levels of customer service. Hence, blanket mandates often have unintended consequences.

In regards to fees: The report is specific to attempt to define that the costs of both existing and proposed product stewardship programs should be absorbed by the manufacturer and ultimately passed on to consumers. However, the report specifies that any assessment passed through the sales chain from manufacturer to distributor to wholesaler to retailer to consumer is “not mischaracterized as a government imposed fee or tax”. The reality is that is exactly what the cost of these programs is – are government imposed fees and taxes.

Some of our members are adamant that they do not want to be responsible for the collection and remittance of fees and taxes at point of sale. However, some retailers are in favor of listing the cost of these programs on retail receipts so that the consumer is aware how much the cost of the product is due to government mandated programs.

It is fair to say that this report was written backwards. Maine DEP and the author in particular started out having already concluded which products it was going to propose as “Candidates for New Product Stewardship Programs.” The Executive Summary simply states without any substantive effort to gather unbiased factual data that the product category in this instance “unused pharmaceuticals” is a candidate because one or more of the criteria that the DEP may use at 38 M.R.S.A., Chapter 18 at S.1772.2 are met.

The Report is draws conclusions without justification and it is difficult to address its many flaws without spending far more time then is warranted. As an example the entire justification for determining “Unused Pharmaceuticals “ is a Household Hazardous Waste (HHW) is set out at page two at the middle paragraph when it says “the Department has identified HHW, including ...” unused pharmaceuticals “ as the first candidates for new products stewardship programs. The report goes on to say such a program will “significantly reduce municipal waste management costs by increase recycling of paint, preventing crime, drug abuse and accidental poisonings related to unused drugs. . . .” The only pharmaceutical citation to justify its placement on the HHW list is the reference to the 2004 Maine Drug Implementation Group alleged conclusion that “Maine needs a permanent statewide program to collect unwanted medications” without ANY further substantive supporting data .

The entire basis for including “unused pharmaceuticals” seems to be set forth at the bottom of page 6 and at the top of page 7 at where it is stated without any factual support that “Based on the list of criteria in Title 38 and the feedback from municipal solid waste managers, the department has identified household hazardous waste (HHW), including ... “unused pharmaceuticals “....as a candidate for new product stewardship programs in Maine.” The previous page states that the feedback from municipal solid waste managers is through informal polling of four meetings/conferences (from footnote 8: *October 2009 meeting at DEP, April 2010 ecomaine Recycling Committee meeting, Maine Resource Recovery Association conference April 2010, Solid Waste Association of North America Northeast Chapter annual meeting May 2010*).

The specific part of the Report starting at page 11 through page 17 dealing with “Unused Pharmaceuticals” is equally flawed. There has never been a finding based on any credible independent

factual evidence that “Unused Pharmaceuticals” meet any one of the four criteria (A,C, D & E) alluded to at the first sentence of the first paragraph at page 11 at 2 “Unused Pharmaceuticals” . The proposal to implement product stewardship for “Unused Pharmaceuticals” set out at page 12 suggesting legislation referenced at Appendix G is verbatim to the legislation LD 821 which was introduced in the first session of the 124th legislature carried over to the second session and died on March 26, 2010 when the Senate failed to enact the legislation sent to it from the House.

The “Discussion on Unused Pharmaceuticals” at pages 12 thru page 17 sets forth a very one sided set of conclusions which do not support the allegations that “unused pharmaceuticals pose significant risks to the public safety, public health or the environment.” The subsequent facts hardly speak for themselves. They have been strung together in a manner which on its face seems to justify the DEP apparent finding that “Unused Pharmaceuticals” are a HHW and as such should be the subject of a pharmaceutical product stewardship program. A more careful analysis with an opportunity to offer credible independent factual testimony will demonstrate that much of what is set forth at pages 13 to 17 cannot be verified as being caused by unused pharmaceuticals.

Efforts to educate the public on taking reasonable safety precautions for the safe keeping of prescription drugs by seeking grants for public service announcements were recently rejected by the Department of Public Safety community review panel. The current system utilized by MaineCare until very recently in an effort to “save money “ has needlessly increased the amount of drugs prescribed and issued especially in MaineCare, maintenance 90 day fill by mail order programs.

The problem with “Unused Prescription” drugs is far more complex then the apparent solution proffered by the DEP in this report. All Health Care Providers welcome an honest open opportunity to be involved in seeking a solution. The proposal offered by this report is fatally flawed and the DEP is not the appropriate state agency to be involved in the solution.

In regards to the proposal for Paint, both Oregon and California and selected individual communities are looking to implement product stewardship for paint. However, the programs are still in their infancy and need more time before their approach is duplicated in Maine.

In 2009, Oregon enacted the first paint product stewardship law, at the encouragement of the Product Stewardship Institute (PSI) and with strong support from the American Coatings Association (ACA). ACA has since worked with government entities and other stakeholders to develop and implement the Paint Product Stewardship Pilot Program in Oregon. Although the American Coatings Association includes a number of paint producers and retailers, it does not include all of the parties that are involved and there is disagreement whether product stewardship of paint is the most appropriate method of disposal among producers and retailers of paint.

Beyond Oregon, numerous other state legislatures are considering product stewardship legislation, and paint is a top priority. PSI, municipal solid waste organizations and ACA are promoting paint legislation in other states and use the Oregon bill as the model that should be followed. A paint stewardship bill based on the Oregon legislation was enacted in California in 2010, though California’s law may be litigated because of the recently passed Proposition 26, which prevents tax or fee increases in California without a 2/3 vote of approval by the legislature.

What is important on any product stewardship program is to require consensus agreement from all parties assigned responsibility in the drafting of any product stewardship plan. It is imperative that if the retail industry is assigned responsibility to help achieve the goals of the program, then they must also be involved in developing a workable plan.

In summation, we strongly urge the department and legislative leaders to take their time before implementing costly new programs on the backs of manufacturers, retailers and consumers. Maine has made progress, but it is also important to support our business community and not rush to add more products to the product stewardship program until more states have adopted programs.

Thank you for the opportunity to comment on this report.

Sincerely,

A handwritten signature in dark ink, appearing to read "Curtis F. Picard". The signature is fluid and cursive, with the first name "Curtis" and last name "Picard" being clearly legible.

Curtis Picard
Executive Director

cc:

Governor Paul LePage

Ms. Kathleen Newman, Deputy Chief of Staff, Office of Governor

Senator Thomas Saviello, Chair, Environment and Natural Resources Committee

Representative James Hamper, Chair, Environment and Natural Resources Committee